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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/079,059

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Harry Wotton III

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EXAMINER

OU, JING RUI

ART UNIT

PAPER NUMBER

3773

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DELIVERY MODE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/079,059	Applicant(s) WOTTON, HARRY	
	Examiner JING OU	Art Unit 3773	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 June 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 14, 15, 17-20, 39, 45 and 46 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 14, 15, 17-20, 39, 45, and 46 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This action is responsive to the election/restriction response filed on June 12, 2008 and REC filed and entered on January 25, 2008. Claims 14, 15, 17-20, 39, 45, and 46 are pending. Claims 14, 39, and 45 are independent. Claims 1-13, 16, 21-38, 40-44, and 47 are cancelled.

Continued Examination Under 37 CFR 1.114

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 01/25/2008 has been entered.

Terminal Disclaimer

3. The terminal disclaimer filed on 01/25/2008 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of USPN 6,395,010 has been reviewed and is accepted. The terminal disclaimer has been recorded.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Art Unit: 3773

5. Claims 14, 15, 17, and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Songer et al (US Pat. No.: 5,741,260).

In regard to Claims 14, 15, 17, and 20, Songer et al discloses a method for crimping a crimp tube comprising: attaching a suture (**42**) to a biological component (**52**, Fig. 3); placing the suture within a crimp tube (**36**, Fig. 4); attaching a first crimp device (**first 36**, the first 36 and the crimp tube 36 are the same, Fig. 8) to a first end of the suture and a second crimp device (**second 36**, Fig. 8) to a second free end of the suture (Fig. 4 and Col. 4, lines 6-26); actuating at least one end of the suture to adjust the tension of the suture (Col. 4, lines 6-10); and crimping the crimp tube using a crimping tool (**10**) having a first crimping member (**30a**) with first inner surface width and a second crimping member (**30b**) with a second inner surface width (Col. 4, lines 20-26); securing the suture within the crimp tube (Col. 4, lines 6-10); engaging the first crimp device and the second crimp device using a tensioning device (**combination of 10 and 50**) to adjust the tension of the suture (Col. 4, lines 6-10); and preventing a significant stress riser at a crimp site on the suture (the shape of 30a and 30b would prevent a significant stress riser at a crimp site on the suture).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 3773

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. Claims 18, 19, and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Songer et al (US Pat. No.: 5,741,260).

In regard to Claims 18 and 19, Songer et al discloses all the limitations of the claims but fails to disclose compression the crimp tube in at least three locations but not more than five locations. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to compression the crimp tube in at least three locations but not more than five locations, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233

In regard to Claim 39, Songer et al discloses a crimping tool, comprising: a first arm (**combination of 12 and 16**) having a proximal end and a distal end, the proximal end comprising a handle (**12**) and the distal end comprising a first jaw (**16**); a second arm (**14 and 18**) having a proximal end and a distal end, the proximal end comprising a handle (**14**) and the distal end comprising a second jaw (**18**), the second arm hingedly connected to the first arm (both arms are hingedly connected at the pivot 20); a first crimping member integral with first jaw of the first arm, the first crimping member having

Art Unit: 3773

a first inner surface width (Figs. 1 and 6); and a second crimping member integral with the second jaw of the second arm, the second crimping member having a second inner surface width (Figs. 1 and 6), the crimping tool including a gap (gap between 30a and 30b, Fig. 4) between the distal portion of the first jaw and the distal portion of the second jaw when placed in a closed position. Songer et al does not appear to disclose the first inner surface width to be 0.0295 inches and the first crimping member and the second crimping member comprise rectangular geometries. However, Applicant should be noted that a modification of size(s), dimension(s), and shape(s) of the crimping members is only a design choice and within level of one of ordinary skill in the art.

9. Claims 45 and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Songer et al (US Pat. No.: 5,741,260) in view of Burke (US Pat. No. 5,545,168).

In regard to Claims 45 and 46, Songer et al discloses all the limitations of the claims as taught above but fails to disclose a method for stabilizing cranial cruciate ligament. However, Burke discloses a method for stabilizing or augmenting of ruptured or sprained ligaments comprising crimping a suture/wire (Col. 8, lines 55-66). At the time of the invention, it would have been obvious to one of ordinary skill in the art, having the teachings of Songer et al and Burke before him or her, to modify the method of Songer et al to be used for stabilizing or augmenting of ruptured or sprained ligaments as taught by Burke and specifically for stabilizing cranial cruciate ligament. The suggestion/motivation for doing so would have been for reconstruction or augmentation of ruptured or sprained ligaments (Burke, Col. 8, lines 63-64), specifically the cranial cruciate ligament.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JING OU whose telephone number is (571)270-5036. The examiner can normally be reached on M-F 7:30am - 5:00pm, Alternative Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Uyen (Jackie) T Ho can be reached on (571)272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JO

/Julian W. Woo/
Primary Examiner, Art Unit 3773